Comments of

The State Building and Construction Trades Council of California, The California State Pipe Trades Council, and The California State Association of Electrical Workers

On the Governor's Proposal to Establish a Department of Energy

May 25, 2005

The Governor's proposed Reorganization Plan is based on a false premise. California's energy challenges have nothing to do with the organization of agencies. They have everything to do with the legacy of deregulation and the Governor's continuing desire to reinstate deregulation. California needs the policy decisions of the Legislature to be implemented; it does not need a Reorganization Plan that has so many flaws.

In the name of reorganization, the Plan would eliminate one of California's most important independent agencies and would substitute partisan energy policy. It would cripple integrated resource planning, would harm ratepayers, would effectively eliminate judicial review of many decisions and would create a conflict of interest within the new Department of Energy. It would not improve California's government. This Commission should recommend that the plan not go into effect.

1. <u>The Problem is Not Lack of California Speaking with a Single Voice; The Problem is The Governor's Rejection of the Legislature's Energy Policy</u>

No doubt, California needs a coherent energy policy. No doubt, it needs an agency structure that can implement that policy. It needs a stable investment climate, clear rules, and more conventional and renewable generation.

The Legislature did its part. Previously, it passed and the prior Governor signed AB 57 and SB 1078, establishing a process to procure both conventional and renewable generation resources. Last year, it passed and sent to the Governor two major policy bills: AB 2006 and SB 1478. The Governor vetoed both bills.

This year, the Governor is supporting his Million Solar Roofs bill. While politically attractive, even if fully implemented it would play only a minor role. More importantly, the Governor is supporting a return to deregulation – the most expensive public policy mistake in California history. That is the fundamental problem and this reorganization plan would only make California's energy agency structure worse.

The current structure of California's energy agencies is fully capable of implementing the Legislature's vision of California's energy policy, and it is successfully implementing the laws that have been enacted. No structural change would be required.

Moreover, the proposed organization change does ***not*** create a single voice. The CPUC is established in the Constitution and will continue to have the major role in regulating the investor owned utilities. The ISO is operating entirely outside of California regulatory control, and would not be affected by this proposal. Creating another major voice in California energy policy adds to, rather than subtracts from, the entities implementing California energy policy.

The worst outcome would be a department of California government claiming to speak for California and advocating a return to deregulation.

2. The Plan Would Eliminate a Critical Independent Agency

The Governor's Plan is worse than doing nothing. The California Energy Commission is one of the shining stars in California government. For decades it has provided thoughtful, non-partisan analysis of the energy issues facing California. Through Republican and Democratic administrations it has provided direction based on fact and reason, not politics.

The Commission has been a major contributor to California's leading role in renewable energy generation, appliance efficiency, building standards and pollution control. From its Electricity Reports in the 1980s and 1990s to the Integrated Energy Policy Reports in this decade, its analysis has been rigorous and timely. We have not always agreed with its conclusions, but we have never doubted the scholarship, independence or sincerity of its work. As Senator Bowen testified, the Energy Commission has always been considered an "honest broker."

The work of the Commission has earned it the highest reputation in California, the United States and throughout the world. Commissioner Keese testified that California's refrigerator efficiency standards are so definitive they have been adopted in China.

The Governor's Plan would eliminate the Commission and replace it with another agency whose work is subject to the day-to-day direction and control of the Governor. In short order, the Commission would lose the credibility and intellectual independence developed over three decades. California would lose a critically important resource: a non-partisan Commission operating for the good of California, rather than the short term interests of whatever administration happens to be in control.

3. The Plan Would Cripple Integrated Resource Planning

California has struggled to rebuild from the disastrous experiment with electricity deregulation. One of the central parts of that rebuilding is to restore integrated resource planning by the electric utilities, which is overseen by the California Public Utilities Commission. The Governor's Plan would reverse that progress.

Integrated planning requires that new generation facilities and new transmission facilities be planned, designed and engineered together. Neither generation nor transmission has any value without the other; and there are often tradeoffs between them. New generation both relies on transmission and can displace the need for transmission. Conversely, new transmission is useful only with generation, and can displace the need for generation.

The Governor's Plan would transfer all transmission siting from the CPUC to the new DOE. Meanwhile, the CPUC would continue to oversee the integrated resource planning by the electric utilities. This is inefficient, and harms, rather than helps, the planning necessary to ensure electric reliability for California. Transmission and generation decisions, and consideration of the tradeoffs between them, need to remain under the control of a single agency – the CPUC.

4. The Plan Would Harm Ratepayers

As part of the transfer of transmission siting authority from the CPUC to the proposed DOE, the Plan would effectively transfer ratemaking authority to DOE. Instead of having the agency whose core competence includes ratemaking evaluating investments costing hundreds of millions of dollars, the new DOE, with no expertise would make that evaluation. Divorced from the daily pressure to control rates, there will be relentless pressure to build an ever greater infrastructure, even if it is not the most cost effective choice for ratepayers.

In addition, transferring transmission siting out of the CPUC would effectively eliminate the role of the Office of Ratepayer Advocates and, because there is no provision for intervenor funding at the CEC, would eliminate ratepayer groups such as TURN. Lacking effective, experienced ratepayer representation, ratepayers will inevitably pay more.

Decisions do need to be centralized – and decisions that greatly impact rates should stay at the CPUC, the constitutional agency charged with that responsibility.

5. <u>The Plan Would Effectively Eliminate Judicial Review – making the consolidation of power more dangerous</u>

In 1998, the previous Republican Governor signed SB 779 which, for the first time, established effective judicial review of decisions of the CPUC. The Governor's Plan would eliminate that judicial review by transferring functions to the DOE, and limiting judicial review of the decisions to the discretionary review by the Supreme Court.

The proposed amendment to Public Utilities Code section 1001(b) would limit judicial review to that provided in Public Resources Code section 25531. That section precludes review by any court other than the Supreme Court.

The end result is that power will be consolidated in the office of the Governor, and will not be subject to the checks and balances of judicial review. This is a recipe for abuse of power.

6. <u>The Plan Would Create a Conflict of Interest within the DOE</u>

The Governor's Plan would have California Energy Resources Scheduling moved from the Department of Water Resources to the new DOE. This would make DOE a very significant participant in the California electric market. Perhaps several billion dollars of extortionate contracts are involved. They are the single biggest cause of California's high electric rates.

At the same time, DOE would be exercising leadership over California energy policy and would be the exclusive California representative in proceedings at FERC to eliminate those contracts.

No agency can be expected to vigorously represent California's interests in minimizing or ending the DWR contracts while at the same time courting the very same parties to carry out other aspects of state policy.

Conclusion

The Commission should recommend against approving this reorganization plan.

Marc D. Joseph
Adams Broadwell Joseph & Cardozo
651 Gateway Blvd., Suite 900
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com
(650) 589-1660